

Magga Ram v. State of Raj. & Ors.

Date of Order : 15th March, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

BY THE COURT :

The suspension of the petitioner from service was revoked by an order dated 23.6.1979 on petitioner being acquitted from the charge of criminal offence by Court of Sessions, Churu by

judgment dated 12.5.1979. The petitioner remained either in police custody or in judicial custody during the investigation and the trial of the case referred above, as such from 29.11.1976 to 12.5.1979 the petitioner was behind the bars.

By an order dated 4.8.1981 the petitioner was again placed under suspension as a criminal case in respect of an offence under Section 25 of Arms Act against him was under trial. The petitioner was exonerated from this charge too by judgment dated 7.1.1988 passed by Additional Chief Judicial Magistrate, Ratangarh.

The petitioner after getting acquittal under the judgment dated 7.1.1988 submitted a representation to competent authority of the respondent department to revoke suspension and the same was revoked by an order dated 6.7.1989. The respondents by order dated 6.7.1989 also accounted the period of suspension under various leave heads. The period of suspension from 25.11.1976 to 3.7.1979 was bifurcated in two parts. The period from 25.11.1976 to 12.5.1979 was treated as a period of extra ordinary leave and the period commencing from 13.5.1979 to 3.7.1979 was treated as half pay leave.

In the period from 25.11.1976 to 12.5.1979 the petitioner was facing trial for offence under Section 302 IPC and he was either in police custody or in judicial custody for that

entire period. This period was treated as the period of extra ordinary leave. The period commencing from 13.5.1979 to 3.7.1979 which was treated as the period for half pay leave is the period in which the petitioner was facing suspension though he was acquitted by the court of competent jurisdiction under the judgment dated 12.5.1979.

By the same order i.e. the order dated 6.7.1989 period of suspension commencing from 4.8.1981 to 21.9.1986 was also adjusted under various leave heads. In this period too 240 days were adjusted against extra ordinary leave, 101 days were treated as earned leave and 254 days were treated as half pay leave. In this manner the respondents adjusted the period of suspension prior to 21.9.1986 by treating 1191 days as extra ordinary leave, 101 days as earned leave and 250 days as half pay leave.

By an order dated 6.1.1992 the respondent No.3 made certain changes in the leave adjustment made under the order dated 6.7.1989. By this order extra ordinary leave was reduced to 1011 days. 213 days were adjusted against half pay leave and 101 days were adjusted against earned leave.

A challenge is given by the petitioner to the order Anx.7 dated 6.7.1989 and the order Anx.9 dated 18.12.1991/27.12.1991/6.1.1992 on the

ground that the respondents wrongly adjusted the period of suspension under various leave heads instead of making payment of full emoluments to the petitioner in view of the provisions of Rule 54(2) of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the Rules of 1951") as the suspension was totally unjustified.

Per contra, the respondents stated in their reply that provisions of Rule 54(2) of the Rules of 1951 could not be applied in case of the petitioner as he was in judicial custody during the period concerned.

I have heard counsel for the parties.

Rule 54 of the Rules of 1951 pertains to the procedure required to be adopted by Government on reinstatement of a government servant who faced dismissal, removal, compulsory retirement or suspension. Rule 54 to the extent it is relevant in present controversy reads as under:-

"54.Re-instatement.- (1) when a Government servant who has been dismissed, removed, compulsory retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the re-instatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant

for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and dearness allowance as such competent authority may prescribe.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes."

The Government also provided certain administrative instructions under Appendix I to Rajasthan Service Rules, 1951 Volume-II dealing with suspension during pendency of criminal proceedings or proceedings for arrest of debt or during detention under a law providing for preventive detention. The administrative instructions provided by the Government referred above under Appendix-I reads as under:-

“(a) A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further orders as contemplated in Rule 13(2) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. A Government servant who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him.

(b) A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of Rule 13(1) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rules unless there are exceptional reasons for not adopting this course;

(c) A Government servant against whom a proceeding has been taken for his arrest for debt who is not actually detained in custody may be placed under suspension by an order under clause (a) of Rule 13(1) of the Rajasthan Civil Services

(Classification, Control and Appeal) Rules, 1958 i.e. only if a disciplinary proceeding against him is contemplated;

(d) when a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in circumstances mentioned in clause (b) is re-instated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under Rule 54, i.e. in the event of his being acquitted of blame or (if the proceeding taken against him was for his arrest for debt) or its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under Rule 54(2), otherwise it may be dealt with under Rule 54(3)."

In the present case the petitioner at first instance was placed under suspension w.e.f. 25.11.1976. The petitioner was behind the bars from 29.11.1976 to 12.5.1979. In the said period it was impossible for the petitioner to attend the office of the respondent as he was in prison. The aforesaid period has been adjusted by the respondents as extra ordinary leave. The period commencing from 13.5.1979 to 3.7.1979 has been treated as a period of half pay leave, during this period the petitioner was facing suspension as the suspension was revoked by the respondents by order dated 23.6.1979 and the petitioner after revocation of suspension joined services on

3.7.1979. It is pertinent to note that in the said period the petitioner was facing a criminal trial which resulted into his acquittal. It is also important to note that the respondents after considering all facts and circumstances of the case reached at a conclusion that no disciplinary proceedings were required to be initiated against the petitioner. In totality of circumstances it can well be said that the petitioner was fully exonerated from the charges and, therefore, his suspension was unjustified. In view of it, there was no just and valid reason to adjust the period of suspension of the petitioner under the leave heads pertaining to extra ordinary leave or half pay leave.

In the period commencing from 4.8.1981 to 21.9.1986 also the petitioner was facing suspension as he was undergoing a criminal trial for an offence under Section 25 of Arms Act. In this case also the petitioner was acquitted by a court of competent jurisdiction. The suspension of the petitioner was revoked by the respondents under the order dated 6.7.1989 with a specific decision not to subject the petitioner for any disciplinary proceedings. The respondents adjusted the above period also under the leave heads of extra ordinary leave, half pay leave and earned leave. The petitioner was exonerated from all allegations by a competent court, therefore, his suspension w.e.f. 4.8.1981 was also unjustified. The respondents came with a case that as the

petitioner was in judicial custody, therefore, the provisions of Rule 54(2) of the Rules of 1951 could not be applied to him. The stand taken by the respondents is in contravention of provisions of Rule 54 of the Rules of 1951. Rule 54(2) of the Rules of 1951 provides that where a competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled had he not been suspended. The Administrative instructions provided by the Government under Appendix-I to the Rules of 1951 provides that a Government servant who is detained in custody as a result of proceedings on a criminal charge, on his reinstatement without taking disciplinary proceedings, shall be entitled to get the period of suspension regulated in accordance with Rule 54, i.e. in the event of his being acquitted of blame shall be dealt with under Rule 54(2) of the Rules of 1951.

In the present case the petitioner was in judicial custody and ultimately he was acquitted from the criminal charges levelled against him and no disciplinary proceedings were initiated by the respondents. In view of it, the case of the petitioner was required to be dealt with in accordance with Rule 54(2) of the Rules of 1951.

The same is the position with regard to suspension of the petitioner commencing from 4.8.1981 to 21.9.1986. In this period also the petitioner was facing trial for a charge pertaining to criminal offence in which ultimately he was acquitted. The respondents did not choose to proceed with the disciplinary proceedings for the same charge, as such the case of the petitioner was required to be dealt with under Rule 54(2) of the Rules of 1951.

In the entire period in which the petitioner remained under suspension either w.e.f. 25.11.1976 or w.e.f. 4.8.1981 the petitioner faced criminal trial in which he was exonerated from the charges by court of competent jurisdiction, as such the suspension of the petitioner was unjustified specially in the circumstances that the respondents by a conscious decision did not choose to initiate disciplinary proceedings against the petitioner. In view of it, the petitioner is entitled for full pay pertaining to the period of suspension as provided under Rule 54 (4) of the Rules of 1951.

In view of it, the orders impugned Anx.7 dated 6.7.1989 and Anx.9 dated 18.12.1991 passed by the Commandant, 1st Battalion, RAC, Mandore Road, Jodhpur to the extent they relate to adjustment of suspension period against various leave heads and to denial of full pay to the petitioner are declared illegal.

In result, this petition for writ, order or direction is allowed. The orders impugned Anx.7 dated 6.7.1989 and Anx.9 dated 18.12.1991/27.12.1991/6.1.1992 passed by the Commandant, 1st Battalion, RAC, Mandore Road, Jodhpur are hereby quashed to the extent these orders relate to adjustment of suspension period against various leave heads. The respondents are directed to treat the entire period of suspension in dispute as a period of duty and further to make payment of full pay to the petitioner as provided under Rule 54(4) of the Rules of 1951.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.